

## **Meeting Minutes**

### **Board of County Commissioners Hyde County**

**Monday, January 6, 2014**

Chairman Barry Swindell called the Regular Meeting of the Hyde County Board of Commissioners to order on Monday, January 6, 2014, in the Hyde County Government Center, Multi-Use Room, and the Ocracoke School Commons Room using electronic conferencing equipment.

The following members were present on the mainland: Commissioners Dick Tunnell, Earl Pugh, Jr., John Fletcher, and Barry Swindell; Attorney Fred Holscher; County Manager Bill Rich; Deputy Clerk to the Board Averil Simmons; and, members of the public.

The following members were present on Ocracoke: Public Information Officer Sarah Johnson and members of the public.

Chairman Swindell began the meeting with a moment of silence in honor of Commissioner Byrd who suffered a stroke on January 1, 2014 and remained hospitalized at the time of the meeting. Following opening prayer by Commissioner Pugh and pledge of allegiance, the meeting was called to order.

#### **Agenda:**

Chairman Swindell asked for any changes to the January 6, 2014 meeting agenda.

Manager Rich presented the following changes to the agenda:

- Item 10 – Attendance of Albemarle RPO meeting in Commissioner Byrd's place
- BR – EMS – Grant from Vidant Health - \$250,000.00

Commissioner Pugh moved to approve the agenda as presented by the Deputy Clerk with the amendments. Mr. Fletcher seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Consideration of Minutes:**

Commissioner Pugh moved to approve the December 2, 2013 regular meeting minutes of the Hyde County Board of Commissioners as presented by the Deputy Clerk. Mr. Fletcher seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Public Comments:**

Chairman Swindell called for comments from the public.

With no comments from the public, Chairman Swindell continued the meeting.

#### **Employee Recognition**

Manager Rich recognized Gary Benson, Maintenance & Janitorial Technician. Clint Berry, Public Utilities Director, who's department also oversees all County-Owned buildings said that Mr. Benson is his most dedicated employee. Mr. Berry said Mr. Benson is the first to arrive at the office every morning, and is the last to leave in the evenings. Mr. Berry also said that Mr. Benson never complains and does as much as he possibly can every day. Mr. Benson spun the Wheel of Thanks and won a \$25.00 gift certificate to Swan Quarter Supply Company. The Board, Manager Rich, and Mr. Berry all thanked him for his service to Hyde County.

#### **Items of Consideration:**

### **Albemarle Regional Bike Plan**

Angela Welsh of the Albemarle Commission's Rural Planning Organization gave a presentation outlining the proposed Albemarle Regional Bike Plan. This plan is the framework for increasing bicycle traffic and safety in the Albemarle Commission's 12-county region. This plan was developed through many public comment sessions and from public input gathered at various public events.

A Resolution Supporting the Adoption of the Albemarle Regional Bicycle Plan was presented for adoption. Commissioner Tunnell made a motion to adopt the Resolution Supporting Adoption of the Albemarle Regional Bicycle Plan. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Tunnell and Swindell; Nays – Fletcher; Absent or not voting – Byrd.

*Clerk's Note: A copy of "Resolution Supporting Adoption of the Albemarle Regional Bicycle Plan" is attached herewith as Exhibit A and incorporated herein by reference.*

### **Presentation - Proposed Government Center Repairs**

Robert Griffin of RGG Architecture, PA, presented the proposed plan for repairs to the Government Center as negotiated with A.R. Chesson. Mr. Griffin stated that the leaks in the roof are due to improper design. A.R. Chesson, who was the Construction Manager when the Government Center was built, has agreed to negotiate with Mr. Griffin for a fixed fee to work with the design team to come up with a comprehensive plan for repairs. All work would be sub-contracted. Mr. Chesson has agreed to pay for any repairs that are his company's fault. Mr. Griffin stated that the overall cost of the repairs should not exceed \$175,000.00. Commissioner Fletcher asked Mr. Griffin how much was estimated to be covered by A.R. Chesson. Mr. Griffin said it was hard to tell as Mr. Chesson has not inspected the building yet.

Commissioner Pugh made a motion to approve entering into a contract with A.R. Chesson to perform the repairs to the Government Center. Mr. Tunnell Seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

*Clerk's Note: A copy of the contract between Hyde County and A.R. Chesson is attached herewith as Exhibit B and incorporated herein by reference.*

### **Reappointments to Hyde County Board of Health**

At the quarterly meeting held on December 17, 2013 the Hyde County Board of Health recommended the reappointment of the following board members to their respective second (2nd) three (3) year term of office: (1) Dr. Erin Baker - Physician and (2) Kenneth Collier – ILO (in lieu of) a Dentist. The first (1st) three year term of office for Dr. Baker expired in December of 2013, while the first (1st) three year term of Mr. Collier expires in January of 2014. Both have agreed to serve a second (2nd) three year term.

Commissioner Fletcher made a motion to approve the reappointments of Dr. Erin Baker and Kenneth Collier to a second, three-year term on the Hyde County Board of Health. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

### **2013 State of the County Health (SOTCH) Report**

Every four (4) years, Local Health Departments (LHDs) are required to submit a comprehensive Community Health Assessment (CHA), which requires the collection of primary and secondary data at the county level. The most recent CHA for Hyde County was conducted in 2011. Typically, during the three (3) interim years, the local health department will issue a State-of-the-County's Health Report that provides updated information about the priority health issues specific to the county. The results are to be disseminated to local health department stakeholders, community partners and the general population. Not for profit hospitals are now required to conduct a comprehensive health needs assessment (CHNA) every 36 months. Therefore, this will be the



second (and final) SOTCH report that is required for the 2011 Community Health Assessment. The next full CHA for Hyde County will be conducted in 2014, and will allow Hyde County Health Department to align with Vidant Health Systems and share resources and data that are beneficial to both agencies.

Commissioner Fletcher made a motion to approve the 2013 Hyde County SOTCH Report. Mr. Tunnell seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Revisions & Additions to Fee Schedule Approved for FY 2011-2012**

At the quarterly meeting held on December 17, 2013 the Hyde County Board of Health approved revisions and/or additions to the Fee Schedule previously approved for fiscal year 2011-2012, with an effective date of October 23, 2013. Local health departments must receive approval of both the Board of Health and Board of County Commissioners for new or revised fee schedules.

Commissioner Fletcher made a motion to approve the revised fee schedule. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Policies for HMGP – Hurricane Irene**

Chris Hilbert of Holland Consulting Planners presented the following items pertaining to the Hazard Mitigation Grant Program for elevation of 5 homes flooded as a result of Hurricane Irene:

1. Resolution Approving Administrative Guidelines and Policies
2. Program Budget Ordinance
3. Financial Management Resolution
4. Elevation Contract Award Policy
5. Local Economic Benefit for Low and Very Low Income Persons Plan
6. Equal Employment and Procurement Policy
7. Designation of Applicant's Agent

Before entertaining a motion from the Board, Chairman Swindell, in an effort to maintain full disclosure, informed the Board that he has a family member whose home is included in this elevation grant.

Commissioner Fletcher made a motion to adopt all policies pertaining to the HMGP-Hurricane Irene Elevation Program. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

*Clerk's Note: A copy of the above-referenced policies are attached herewith as Exhibit C and incorporated herein by reference.*

#### **CDBG Contingency Revised Project Budget Ordinance**

Hyde County is extending the sewer service from the western end of the Engelhard Sanitary District down US Hwy 264. The county has completed a revised environmental review; submitted a Special Order by Consent for the Engelhard Sanitary District to DENR; and successfully bid, negotiated a contract, and proceeded with the construction phase of the project. The force main and all STEP pump systems are in place and the only remaining items of work are pump testing and individual plumbing and electrical connections to the 30 units being provided public sewer service.

During a construction progress meeting on 11/6/13, the project engineer and contractor advised the county staff and CDBG management consultant that there were some concerns by both the Sanitary District and the county building inspector related to 1) pre-existing "gray water" discharges outside the existing septic tanks, and 2) suggested modifications to existing electrical panel boxes to accommodate the extra circuit required for the pump/alarm control panel. At the progress meeting, all parties agreed that project could be successfully completed within budget as bid; however, it was also agreed that the project benefit to individual homeowners could be significantly improved if additional CDBG funds could be identified to address these concerns for individual homeowners,

who will be required at some point in the future to make these improvements at their own expense if CDBG funds are not available.

North Carolina Department of Commerce was responsive to this need and has appropriated an additional \$25,754.25 to complete the project. All proposed plumbing and electrical modifications have already been identified by the contractor and county/ESD inspectors.

Commissioner Fletcher made a motion to approve the revised Project Budget Ordinance. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

*Clerk's Note: A copy of the CDBG – Contingency Revised Project Budget Ordinance is attached herewith as Exhibit D and incorporated herein by reference.*

**Resolution Authorizing the Advertisement of an Offer to Lease Certain Surplus Real Property Located in or Near the Town of Swan Quarter, Hyde County, North Carolina**

The Hyde County Board of Commissioners voted in November 2013 to renew the current lease for the tower and ground space on which the US Cellular tower is located in Swan Quarter pending proper procurement procedures per N.C. General Statutes. North Carolina General Statute § 160A-272(b) authorizes a county to lease real property that it owns for more than ten (10) years so long as such leases are "... treated as a sale of property ..." and so long as such leases are "... executed by following any of the procedures authorized for the sale of real property." North Carolina General Statute § 160A-269 authorizes a county to sell real property it owns through a negotiated offer, advertisement, and upset bid process. The County of Hyde (County) has received a proposed Second Amendment to an existing Tower and Ground Lease for space located on said tower as described in the Tower and Ground Lease dated October 23, 1998. This Second Amendment would cover a period in excess of ten (10) years.

A Resolution Authorizing the Advertisement of an Offer to Lease Certain Surplus Real Property Located in or Near the Town of Swan Quarter, Hyde County, North Carolina, if adopted by the Board will start the bid process. After adoption of the Resolution, the attached Public Notice will run in the January 9, 2014 of the Coastland Times. If during the 10 day upset period, no other entity has upset the bid, a second Resolution will be adopted in February and the Amendment to the lease can be signed by the Board Chair.

Commissioner Fletcher made a motion to approve the Resolution Authorizing the Advertisement of an Offer to Lease Certain Surplus Real Property Located in or Near the Town of Swan Quarter, Hyde County, North Carolina. Mr. Tunnell seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

*Clerk's Note: A copy of "Resolution Authorizing the Advertisement of an Offer to Lease Certain Surplus Real Property Located in or Near the Town of Swan Quarter, Hyde County, North Carolina" is attached herewith as Exhibit E and incorporated herein by reference.*

**Revolving Loan Fund Application – Martin Lumber Company**

Martin Lumber Company is a sawmill located at 301 Main Stem Road, Pantego, NC in the community of Grassy Ridge, Hyde County. The principal product is pallet stock. The business was started in 1996. Martin Lumber Company typically serves a geographic market area of 150 radius and primary customers include Precision Pallet, Wheeler Industries, Granville Pallet and Wayne Opportunity Center.

Martin Lumber Company needs to increase its capacity to include production of small logs. Martin Lumber is challenged to get big logs consistently as log companies find it much easier to sell both their large and small logs at the same location. The new machinery and equipment purchased through this project will handle small logs. By purchasing smaller logs from their suppliers Martin Lumber will achieve a larger volume of large logs.



Martin Lumber a for-profit enterprise respectfully submits this application for the Hyde County Revolving Loan Fund in the amount of \$100,000.00 to expand capabilities and increase production levels, while creating 6 new jobs. Martin Lumber's goal is to increase the economic prosperity of the area, a Tier one county, by leveraging existing resources with those of the Hyde County RLF to provide long term employment opportunities to our local area residents in sectors related to rural wood production.

The Hyde County Revolving Loan Committee met on Monday, January 6, 2014 at 10 a.m. in the Government Center, Swan Quarter to review the full application and made a recommendation to the Board of Commissioners. The County Planner reported to the Board that the RLF Committee's recommendation was to approve the application pending documentation of investment quotes and a security agreement.

Commissioner Fletcher made a motion to approve Martin Lumber Company's application for a loan from the Hyde County Revolving Loan Fund in the amount of \$100,000.00, pending documentation of investment quotes and a security agreement. Mr. Tunnell seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Attendance of Albemarle RPO Meeting in Commissioner Byrd's Place**

The Albemarle Rural Planning Organization was scheduled to meet Friday, January 10, 2014. Commissioner Byrd served as Hyde County's Commissioner Representative on that board. Manager Rich explained to the Commissioners that Hyde County needed to send a representative to the meeting. Commissioner Swindell made a motion to let Manager Rich attend the RPO meeting in Commissioner Byrd's absence. Mr. Fletcher seconded the motion. Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Budget Matters**

The following budget revisions were presented for Board approval:

Line Item	Amount
EMS Grant from Vidant Health	\$250,000
BR 15-14 Health – Family Planning	\$265

Commissioner Pugh made a motion to approve the presented budget revisions. Mr. Fletcher seconded the motion. The motion passed on the following vote: Ayes –Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

#### **Closed Session in Accordance with NCGS §143A-318.11(a) (Personnel)**

Commissioner Fletcher made a motion to enter into closed session to discuss personnel matters. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes –Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd. The Board then entered closed session.

Commissioner Pugh made a motion to exit closed session. Mr. Fletcher seconded the motion. The motion passed on the following vote: Ayes –Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

After exiting closed session, Commissioner Fletcher made a motion to extend Manager Rich's contract with Hyde County as County Manager beginning March 1, 2014 for a period of four (4) years and an increase in Manager Rich's salary to \$85,000.00 for the fiscal year 2014-2015 and \$95,000 for the three (3) following years. Mr. Tunnell seconded the motion. The motion passed on the following vote: Ayes –Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd.

### **Management Reports:**

**Commissioner Fletcher:** Currently working with the Ocracoke Civic and Business Association (OCBA) to extend water service to more Ocracoke residents.

**Commissioner Pugh:** Attended the Engelhard Christmas Parade, Hotline Winter Gala, Blackland Farmers' Unmanned Aerial Systems demonstration, Ocracoke Oyster Roast, and the Vidant Health meeting regarding their grant to Hyde County EMS.

**Commissioner Tunnell:** Attended the NC Farm Bureau Convention where concerns about the health of the commercial fishing industry were discussed, said Farm Bureau is passing a resolution supporting commercial fishing. He also attended the NC State Cooperative Extension listening session, attended the Blackland Farmers' tour of Mattamuskeet Lodge and the Hyde County Airport/Unmanned Aerial Systems demonstration, LPAN meeting, and Ocracoke Oyster Roast.

**Commissioner Swindell:** Attended Vidant Health meeting regarding their grant to Hyde County EMS where he was presented with the check for \$250,000.00. Also rode in the Engelhard and Scranton Christmas Parades, and attended the Hyde County Board of Health meeting.

### **Manager's Update:**

**FEMA Update** – Washington D.C. trip to meet with Congressmen and Senators went well. He was able to meet with Senator Hagan's staff, Congressman Jones, and Senator Burr. Hyde County has already received one check from FEMA and another check is on the way.

**Albemarle RPO – Ferry Tolls** – Has met with Ferrell Blount, Malcolm Fearing, and Richard Walls of NC DOT and they are anticipating that Hyde County will be the most affected by any new ferry tolls. He said that Hyde County will eventually see an increase in the ferry tolls. Commissioner Fletcher asked Manager Rich to please speak with OCBA regarding this matter.

**Mary Ellen Box / Sunshine Foundation** – This foundation has committed five (5) scholarships to Hyde County high school students. The scholarship is for a total of \$25,000.00 to be disbursed per semester. Recipients are required to maintain a GPA of 3.0 or higher each semester while in receipt of scholarship funds. The scholarship amounts are awarded based on applicant's personal situation and needs and is administered in the manner that will be most beneficial to the student.

### **Public Comments:**

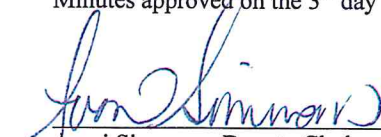
Chairman Swindell called for comments from the public. There being no comments from the public, Chairman Swindell continued the meeting.

### **Adjourn**

With no further business, Commissioner Fletcher made a motion to adjourn the meeting. Mr. Pugh seconded the motion. The motion passed on the following vote: Ayes – Pugh, Fletcher, Tunnell and Swindell; Nays – None; Absent or not voting – Byrd. The meeting adjourned at 7:32p.m.

Respectfully submitted:

Minutes approved on the 3<sup>rd</sup> day of February, 2014.

  
Averil Simmons, Deputy Clerk  
Hyde County Board of Commissioners

  
Barry Swindell, Chair  
Hyde County Board of Commissioners





Attachments:

Exhibit A: *"Resolution Supporting Adoption of the Albemarle Regional Bicycle Plan"*

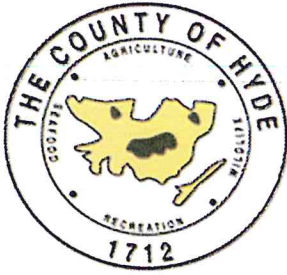
Exhibit B: *Contract between Hyde County and A.R. Chesson*

Exhibit C: *Program Policies for HMGP-Hurricane Irene Elevation:*

- 1. Resolution Approving Administrative Guidelines and Policies*
- 2. Program Budget Ordinance*
- 3. Financial Management Resolution*
- 4. Elevation Contract Award Policy*
- 5. Local Economic Benefit for Low and Very Low Income Persons Plan*
- 6. Equal Employment and Procurement Policy*
- 7. Designation of Applicant's Agent*

Exhibit D: *CDBG – Contingency Revised Project Budget Ordinance*

Exhibit E: *"Resolution Authorizing the Advertisement of an Offer to Lease Certain Surplus Real Property Located in or Near the Town of Swan Quarter, Hyde County, North Carolina"*



**BOARD OF COMMISSIONERS  
OF THE COUNTY OF HYDE  
NORTH CAROLINA**

**Resolution Supporting the Adoption of the  
Albemarle Regional Bicycle Plan**

**WHEREAS**, the Albemarle Commission, the Albemarle Rural Planning Organization (ARPO), the County of Hyde, other participating local governments, and their subcontractor Alta/Greenways, have prepared the Albemarle Regional Bicycle Plan (the Plan) AND;

**WHEREAS**, the Plan was financed by North Carolina Department of Transportation grant AND;

**WHEREAS**, the Vision Statement which guides the Plan states "The Albemarle region is a Bicycle Destination for the World where roadways comfortably accommodate all modes of transportation" AND;

**WHEREAS**, the planning process for the Plan began in July of 2013 and concluded in October of 2013 and Public participation in the form of workshops, steering committee meetings and the Plan being made available on the Internet played a big role in its development;

**NOW, BE IT THEREFOR RESOLVED** by the Hyde County Board of Commissioners that the County of Hyde

Duly adopted this the 6<sup>th</sup> Day of January, 2014.

Attested by:

Barry Swindell, Chairman  
Hyde County Board of Commissioners



Lois Stotesberry, Clerk  
Hyde County Board of Commissioners





# AIA® Document A134™ – 2009

## Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the first day of January in the year 2014  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status and address)

HYDE COUNTY  
30 OYSTER CREEK RD  
SWAN QUARTER, NC 27885

and the Construction Manager:  
(Name, legal status and address)

A.R. CHESSON CONSTRUCTION CO., INC.  
P.O. BOX 1147  
315 W. MAIN ST.  
WILLIAMSTON, NC 27892

for the following Project:  
(Name and address or location)

HYDE COUNTY COURTHOUSE AND GOVERNMENT CENTER WATER  
PENETRATION REMEDIATION AND BUILDING REPAIRS  
30 OYSTER CREEK RD  
SWAN QUARTER, NC 27885

The Architect:  
(Name, legal status and address)

ROG ARCHITECTURE, PA  
101 W. 14<sup>th</sup> STREET  
SUITE 110  
GREENVILLE, NC 27834

The Owner's Designated Representative:  
(Name, address and other information)

MR. BILL RICH  
COUNTY MANAGER  
30 OYSTER CREEK RD  
SWAN QUARTER, NC 27885

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

init.

The Construction Manager's Designated Representative:  
(Name, address and other information)

AL R. CHESSON  
P.O. BOX 1147  
315 W. MAIN ST.  
WILLIAMSTON, NC 27892  
Telephone Number: 252-792-4486  
Fax Number: 252-792-9090  
Mobile Number: 252-809-2475  
Email Address:

The Architect's Designated Representative:  
(Name, address and other information)

ROBERT GRIFFIN, AIA  
101 W. 14<sup>th</sup> STREET  
SUITE 110  
GREENVILLE, NC 27834  
Telephone Number: 919-270-3811  
Email Address:

The Owner and Construction Manager agree as follows.

Methodology for Corrections of Water Penetration and Related Damage  
Hyde County Government Center

The Construction Manager A. R. Chesson Construction Company, Inc. accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner Hyde County to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

The Owner, Architect and Contractor shall review the Contract Documents, (Plans and Specifications of the original design) of the building, subsequent Owner approved modifications to the Contract Documents and the current as built condition of the building. If it is determined by the current Consultant (RGG Architecture, PA), now Owner's Consultant in review with the Owner, that any Contract Document details and conditions were not properly installed or material furnished as per the original approved plans and subsequent Owner approved modifications, the cost to correct those issues and the Owners related cost, shall be borne solely by the General Contractor.

If the work in place is as per the design intent and details of the Contract Documents (Plans and Specifications) and subsequent Owner approved modifications to the Contract Documents was accepted by the original Architect (Brennan Associates) and the Owner's representative at the time of Occupancy, any corrections to those designs shall be at the expense of the Owner as per the terms and conditions of this Agreement.

Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain competitive bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Construction Manager shall review the bids for accuracy, completion, rank the bids in order with recommendations for acceptably and shall deliver

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such bids to the Owner. Every effort will be made to solicit bids from local responsible subcontractors, suppliers and vendors.

The Owner shall then determine, with the advice of the Construction Manager and the Consultant/Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The Construction Manager will also be responsible to coordinate the work of all trades to insure that work is performed in a timely and cost effective manner. It is understood that work shall be scheduled with the Owner so as not to minimize any interference with the daily activities of the Owner's employees and the general public.

#### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

#### ARTICLE 1 GENERAL PROVISIONS

##### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein, to also include independent Report by Lamun Engineering dated April 1, 2013 and independent report by REI Engineering dated August 15, 2013. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

##### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and

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supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

### § 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201-2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201-2007 shall control adjustments to the Contract Time.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

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### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of any necessary Construction Documents details, necessary for the property renovation or additions to the existing building, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### § 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent

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with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost (except as noted in ARTICLE 4 Paragraph 4.1.2) to be reimbursed by the Owner under this Contract as of part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids where possible from a minimum of three (3) qualified Subcontractors and from suppliers of materials or equipment fabricated especially for the Work Owner (with emphasis placed on local sub trades and vendors) and shall deliver such bids with Construction Manager review and recommendations to the Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.3 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.



§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.6 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project constants, and criteria including schedule flexibility and site restrictions.

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable,



grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all Owner related legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect/Consultant as noted in this Contract to provide those duties and responsibilities necessary for the execution of this Contract. Any cost incurred by the Owner related to the Architect/Consultant's services, duties and responsibilities that were made necessary as a result of any Contract Document details and conditions were not properly installed or material furnished as per the original approved plans and subsequent Owner approved modifications, by the General Contractor shall be borne solely by the General Contractor as a part of his Contract.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

An allowance in the amount of \$5,000 for the Project Manager and Al Chesson's time for meeting on site with the Architect/Consultant and Owner to determine the scope of work. To be billed hourly on an actual cost not to exceed basis plus reimbursable expenses which include tow site visits plus printing and postage.

Hourly Rate for CM:

Al R. Chesson \$75.00

Project Manager, Chris Jones \$50.00

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ninety (90) days of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and

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customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice with proper supporting documentation. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

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### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

#### § 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Cost of the work, cost of defined general conditions to deliver the agreed upon work plus a Construction Manager fee of Six Percent (6%)

#### § 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Cost of the work, cost of defined general conditions to deliver the agreed upon work plus a Construction Manager fee of Six Percent (6%)

#### § 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

#### § 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the cost paid for comparable equipment put at the place of the Project.

#### § 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

#### § 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

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§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, Interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.  
*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

*(Paragraph deleted)*

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Mileage will be reimbursed at a rate of \$0.56 per mile.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Costs**

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution

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of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

*(Paragraph deleted)*

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not to Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- 1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- 2 Expenses of the Construction Manager's principal office and offices other than the site office;
- 3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;
- 4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- 5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- 6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and
- 7 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work.

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equipment, goods or service from the related party, as a Subcontractor, according to the terms of Page 2 (The Owner and Construction Manager agree as follows in Methodology for Corrections of Water Penetration and Related Damage Hyde County Government Center).

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take the Cost of the Work as described in Section 6.1.1;
2. Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Subtract retainage of five percent ( 5 %) from that portion of the Work that the Construction Manager self-performs;
4. Subtract the aggregate of previous payments made by the Owner;
5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and



- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

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## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Bonding requirements and any additional liability insurance (if required) beyond those outlined in Article 11 of the AIA Document A201-2007 will be made a part of this Contract by mutual agreement when determined by Owner and Legal Counsel. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☒ Other: (Specify)

Negotiation first, if dispute resolution not achieved through Negotiation, then Litigation in a court of competent jurisdiction.

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. See Page 2 (The Owner and Construction Manager agree as follows in Methodology for Corrections of Water Penetration and Related Damage Hyde County Government Center)

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Owner's Approval of the Control Estimate

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no

Init.



event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201-2007. The provisions of Article 14 of A201-2007 do not otherwise apply to this Section 10.2.

§ 10.2.2 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

§ 10.2.3 In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201-2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner.



### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

This Contract will be interpreted, construed and enforced in all respects in accordance with the laws of the State of North Carolina.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- 1 AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- 2 AIA Document A201-2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

MR. BILL RICH, HYDE COUNTY MANAGER  
(Printed name and title)

AL R. CHESSON, PRESIDENT  
(Printed name and title)

Init.

**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION GRANT PROGRAM (HMGP)**  
**Resolution Approving Administrative Guidelines and Policies**

WHEREAS, Hyde County wishes to carry out its Hurricane Irene Hazard Mitigation Program (HMGP) in accordance with established state and federal administrative guidelines.

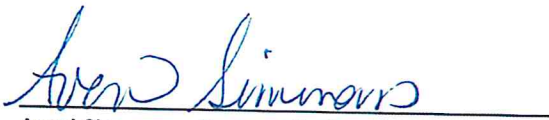
NOW, THEREFORE, the Hyde County Board of Commissioners hereby collectively adopts the following resolutions, guidelines, plans and policies, and resolves that they be utilized during the administration of the Hyde County Hurricane Irene Hazard Mitigation Program (HMGP):

1. Project Budget Ordinance
2. Financial Management Resolution
3. Elevation Contract Award Policy
4. Local Economic Benefit for LMI Persons (Section 3) Plan
5. Equal Employment and Procurement Policy
6. Temporary Relocation Policy
7. Designation of Project Agent

Adopted this 6<sup>th</sup> day of January, 2014,

  
Barry Swindell, Chair  
Hyde County Board of Commissioners

ATTEST:

  
Averil Simmons, Deputy Clerk to the Board



**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION PROGRAM (HMGP)**  
**Program Budget Ordinance**

Be it ordained by the Hyde County Board of Commissioners, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant program ordinance is hereby adopted:

Section 1. The program authorized is the Hyde County Hurricane Irene Hazard Mitigation Grant Program (HMGP) described in the work statement contained in the grant agreement (#HMGP-4019-0023) between Hyde County and the North Carolina Division of Emergency Management. This program is more familiarly known as the Hyde County Hurricane Irene HMGP.

Section 2. Hyde County staff is hereby directed to proceed with the grant program within the terms of the grant document(s), the rules and regulations of the North Carolina Division of Emergency Management, and the budget contained herein.

Section 3. The following revenues and resources are anticipated to be available to complete the program activities:

<u>Hurricane Irene Hazard Mitigation Program (HMGP)</u>	
HMGP Grant	\$325,288.00
 Total	 \$325,288.00

Section 4. The following amounts are appropriated for the program activities:

<u>Hurricane Irene Hazard Mitigation Program (HMGP)</u>	
Program Budget	\$325,288.00

Section 5. The Grant Finance Officer is hereby directed to maintain within the Grant Program Fund sufficient specific detailed accounting records to provide the accounting to the North Carolina Division of Emergency Management required by the grant agreement(s) and federal and state regulations.

Section 6. Funds may be advanced from the General Funds for the purpose of making payments as due. Reimbursement requests should be made to the North Carolina Division of Emergency Management in an orderly and timely manner.

Section 7. The Grant Finance Officer is directed to report quarterly on the financial status of each program element in Section 4 and on the total grant revenues received or claimed.

Section 8. The Grant Finance Officer is directed to include a detailed analysis of past and future costs and revenues on this grant program in every budget submission made to this council.

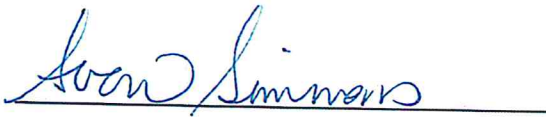
Section 9. Copies of this grant program ordinance shall be made available to the Grant Finance Officer for direction in carrying out this program.

Adopted this 6<sup>th</sup> day of January, 2014,



Barry Swindell, Chair  
Hyde County Board of Commissioners

ATTEST:



Averil Simmons, Deputy Clerk to the Board



**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION GRANT PROGRAM (HMGP)  
Financial Management Resolution**

WHEREAS, Hyde County has received a Hurricane Irene Hazard Mitigation (HMGP) Program Grant in the amount of \$325,288.00, and has committed other revenues to the program; and

WHEREAS, the North Carolina Administrative Code regulations require that the county designate a Grant Finance Officer and a depository for HMGP Program grant funds;


NOW, THEREFORE, Hyde County hereby resolves the following:

- (1) Corrinne Gibbs, Finance Director, will serve as Grant Finance Officer, and will be responsible for financial management of the program according to the requirements of the North Carolina Administrative Code and North Carolina General Statute requirements.
- (2) Vantage South Bank, in Engelhard, NC, is hereby designated as the official depository for revenues budgeted for the PDM Program.

Adopted this 6<sup>th</sup> day of January, 2014,

  
Barry Swindell, Chair  
Hyde County Board of Commissioners

ATTEST:

  
Averi Simmons, Deputy Clerk to the Board



**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION GRANT PROGRAM (HMGP)**  
**Elevation Contract Award Policy**

During the performance of housing elevation activities included in the Hyde County Hurricane Irene Hazard Mitigation Grant (HMGP) Program, the county will utilize the following guidelines in the award of contracts to contractors who bid on the elevation of specific dwelling units:


- 1) The county shall reserve the right to reject bids and rescind contract awards if one of the following conditions has not been met:
  - a. The contractor must have turned in all required forms, credit report, references, etc., with his bid;
  - b. The contractor must have references and a past working record acceptable to the HMGP Administrator prior to the HMGP Administrator's recommendation of award to the Hyde County Board of Commissioners;
  - c. The contractor must have demonstrated the ability to meet the performance criteria established in the Instructions to Bidders and the elevation contract.
  - d. The contractor must have demonstrated the ability to meet standards of workmanship outlined in the construction specifications as witnessed by the HMGP Administrator.
- 2) Assessment of conditions 1(c) and 1(d) above shall be based on the HMGP Administrator's review of contractor references and work performed in other locations, if the contractor has not performed recent elevation work for Hyde County.
- 3) If construction estimates are prepared, no contract award shall be made if the contract price is less than 85% or more than 115% of the HMGP Administrator's final estimate. The HMGP Administrator will document negotiation of bids and/or estimates before contract awards are made.
- 4) In a case where an individual contractor is performing adequately, but he is the low bidder on more houses than he can complete within 120 days following the bid opening, (based on past performance), the county shall reserve the right to reject bids for those surplus houses, and award those houses to the next lowest bidders meeting the guidelines outlined herein, in the interest of efficient completion of elevation activities. The county also reserves the right to reject bids and award contracts to alternate bidders in the interest of maintaining an efficient work schedule consistent with performance standards mandated by the funding agency.
- 5) The county reserves the right to rescind contract awards made prior to contract execution if circumstances beyond the control of the county, including directives by the funding agency or homeowner's non-participation, prohibit the county's participation in the contract as Owner's Representative.
- 6) Any action, either restrictive or affirmative, taken under these guidelines, shall be in the interest of an efficiently-managed HMGP program, and will be without self-interest on the part of any member of the Hyde County Board of Commissioners or county staff; and furthermore, shall be without regard to race, creed, sex, color, or national origin.

- 7) The Hyde County Manager has demonstrated the ability to coordinate grant program activities with this Board. The Hyde County Board of Commissioners also realizes the importance of prompt action in the interest of maintaining satisfactory work progress. Therefore, the Hyde County Manager is hereby authorized to approve and execute all elevation change orders less than 15% of current contract value.

Adopted this 6<sup>th</sup> day of January, 2014,

  
Barry Swindell, Chair  
Hyde County Board of Commissioners

ATTEST:

  
Averil Simmons, Deputy Clerk to the Board



**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION PROGRAM (HMGP)**  
**Local Economic Benefit for Low and Very Low Income Persons Plan**


To insure that to the greatest extent possible contracts for work are awarded to business concerns located in or owned in substantial part by persons residing in the Section 3 covered area, as required by Section 3 of the Housing and Urban Development Act of 1968, Hyde County (hereinafter called "the county") has developed and hereby adopts the following Section 3 Plan:

1. This Section 3 Plan shall apply to services needed in connection with the Hurricane Irene Hazard Mitigation Grant Program (HMGP) including, but not limited to, businesses in the fields of planning, consulting, design, building construction/renovation, maintenance & repair, etc.
2. The Section 3 project area for the purpose of the HMGP Program shall include all of Hyde County, Beaufort County, and Tyrrell County.
3. When in need of a service, the county will identify suppliers, contractors, or subcontractors located in the Section 3 area. Resources for this identification shall include the North Carolina Historically Underutilized Business Office (HUB), local directories, and the Small Business Administration local offices. Word of mouth recommendations shall also be used as a source. Where deemed necessary, listings from any agency noted above shall be distributed to prime contractors as potential sources of subcontractors and suppliers.
4. The county will include required Section 3 clauses in all contracts executed under this HMGP Program. Where deemed necessary, listings from any agency noted in Item 3, above, shall be included as well as sources of subcontracts and suppliers.
5. Each elevation contractor shall be required to submit a Section 3 Plan. This Plan will be maintained on file in the grant office and shall be updated from time to time or as the grant staff may deem necessary.
6. All jobs will be listed through and hiring will be done through the local office of the North Carolina Employment Security Commission; all contracts will be listed with the North Carolina Historically Underutilized Business (HUB) office; potential employees and businesses may seek development and training assistance through various state and local agencies.

Adopted this 6<sup>th</sup> day of January, 2014,

  
Barry Swindel, Chair  
Hyde County Board of Commissioners

ATTEST:

  
Averil Simmons, Deputy Clerk to the Board

**HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION GRANT PROGRAM (HMGP)**  
**Equal Employment and Procurement Policy**

**A. GENERAL EQUAL EMPLOYMENT AND PROCUREMENT POLICY**

Hyde County maintains the policy of providing equal employment opportunities for all persons regardless of race, color, religion, sex, national origin, handicap, age, political affiliation, or any other non-merit factor, except where religion, sex, national origin, or age are bona fide occupation qualifications for employment.

In furtherance of this policy, the county prohibits any retaliatory action of any kind taken by any employee of the county against any other employee or applicant for employment because that person made a charge, testified, assisted or participated in any manner in a hearing, proceeding or investigation of employment discrimination.

The county shall strive for greater utilization of all persons by identifying previously underutilized groups in the work force, such as minorities, women, and the handicapped, and by making special efforts toward their recruitment, selection, development, upward mobility, and any other term, condition, or privilege of employment.

Responsibility for implementing equal opportunities and affirmative action measures is hereby assigned to the County Manager and/or other persons designated by the Hyde County Board of Commissioners to assist in the implementation of this policy statement.

The county shall develop a self-evaluation mechanism to provide for periodic examination and evaluation. Periodic reports as requested on the progress of equal employment opportunity and affirmative action will be presented to the Hyde County Board of Commissioners by the County Manager.

The county is committed to this policy and is aware that with its implementation the county will receive positive benefits through the greater utilization and development of all its human resources.

**B. PROCUREMENT POLICY FOR FEDERAL GRANT PROGRAMS**

All procurement of goods and services by Hyde County with HMGP grant funds shall be accomplished in accordance with the regulations of 44CFR13.36 or the North Carolina General Statutes applying to procurement in general by North Carolina municipalities/ counties.

When the federal and state regulations are different, the more restrictive regulations shall apply to the procurement in question. Additionally, the county will adhere to the following guidelines during procurement of goods and services with federal funds:

1. In all cases where goods or services are procured on the basis of one bid or proposal received, the county will follow established principles included in OMB Circular A-87 to verify the reasonable cost of the procurement, and shall contact the state agency supervising the grant program before making any contract award on the basis of non-competitive negotiation.




2. Historically underutilized businesses, including women- and minority-owned enterprises shall be included on bidders' or professional services' lists maintained by the county, and such firm(s) shall be solicited for all competitive negotiations, small purchases, and informal and formal bids when such firms are potential competitive sources for goods and services.
3. The county shall develop a written statement of work for each service to be awarded on the basis of competitive negotiation, which shall include descriptions of tasks to be completed, project timetables, and an outline of fee proposal requirements. The statement of work shall also include a written selection procedure. All competitive negotiations shall be awarded strictly on the basis of written selection procedures, and cost shall not be the sole or more important factor in selection of services through the use of competitive negotiation.
4. Prior to any contract award, the county shall verify the contractor's eligibility to participate in a federally-assisted program.
5. No consultant or bidder shall assist in evaluation of proposals or bid packages for contracts in which that consultant or bidder has an indirect or direct interest. The county shall adhere to all applicable federal and state conflict of interest regulations in making contract awards.
6. The county shall request references, or check references, of contractors or firms who are awarded contracts with federal grant funds, and will request a written warranty for all goods and services provided through small purchase requests.
7. The county shall not award any contracts for federally-assisted projects on a contingency or cost plus percentage of cost basis.

Adopted this 6<sup>th</sup> day of January, 2014,

  
Barry Swinder, Chair  
Hyde County Board of Commissioners

ATTEST:

  
Averil Simmons, Deputy Clerk to the Board

HYDE COUNTY HURRICANE IRENE HAZARD MITIGATION GRANT PROGRAM (HMGP)  
Designation of Applicant's Agent

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF HYDE COUNTY  
(Governing Body) (Public Entity)

THAT Hyde County, a public entity established under the laws of the State of North Carolina, hereby authorizes its agent to provide to the State and to the Federal Emergency Management Agency (FEMA) for all matters pertaining to such Federal disaster assistance the assurance and agreements printed on the reverse side hereof.

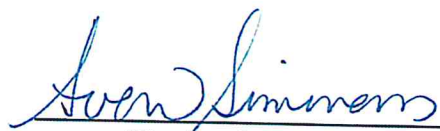
Passed and approved this 6<sup>th</sup> day of January, 2014.

  
\_\_\_\_\_  
Barry Swindell, Chair  
Hyde County Board of Commissioners

CERTIFICATION

I, Averil Simmons, duly appointed Deputy Clerk to the Board of Commissioners of Hyde County, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Commissioners of Hyde County, on the 6<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Deputy Clerk to the Board  
(Official Position)

  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
January 6, 2014  
(Date)



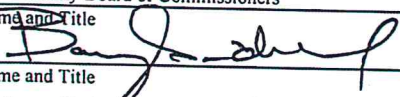
**RESOLUTION**  
**DESIGNATION OF APPLICANT'S AGENT**  
**North Carolina Division of Emergency Management**

Organization Name (hereafter named Organization): <b>Hyde County</b>		Disaster Number: <b>Hurricane Irene Hazard Mitigation Grant Program</b>
Applicant's State Cognizant Agency for Single Audit purposes (If Cognizant Agency is not assigned, please indicate): <b>North Carolina Department of Crime Control and Public Safety</b>		
Applicant's Fiscal Year (FY) Start	Month: <b>July</b>	Day: <b>1</b>
Applicant's Federal Employer's Identification Number: <b>56-60000-308</b>		
Applicant's Federal Information Processing Standards (FIPS) Number:		

PRIMARY AGENT	SECONDARY AGENT
Agent's Name <b>Kris Noble</b>	Agent's Name <b>Corrinne Gibbs</b>
Organization <b>Hyde County Government</b>	Organization <b>Hyde County Government</b>
Official Position <b>Planning Director</b>	Official Position <b>Finance Officer</b>
Mailing Address <b>PO Box 188</b>	Mailing Address <b>PO Box 188</b>
City, State, Zip <b>Swan Quarter, NC 27885</b>	City, State, Zip <b>Swan Quarter, NC 27885</b>
Daytime Telephone <b>(252) 926-4180</b>	Daytime Telephone <b>(252) 926-4193</b>
Facsimile Number <b>(252) 926-3701</b>	Facsimile Number <b>(252) 926-3701</b>
Pager or Cellular Number <b>na</b>	Pager or Cellular Number <b>na</b>

BE IT RESOLVED BY the governing body of the Organization (a public entity duly organized under the laws of the State of North Carolina) that the above-named Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available. BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the Organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and the assurances printed on the reverse side hereof. BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GOVERNING BODY	CERTIFYING OFFICIAL
Name and Title <b>Hyde County Board of Commissioners</b>	Name <b>Averi Simmons</b>
Name and Title 	Official Position <b>Deputy Clerk to the Board of Commissioners</b>
Name and Title <b>Chairman, Hyde County Board of Commissioners</b>	Daytime Telephone <b>(252) 926-3701</b>

**CERTIFICATION**

I, Averi Simmons (Name) duly appointed and Deputy Clerk (Title) of the Governing Body, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Governing Body of Hyde County (Organization) on the 6th day of January, 2014.

Date: 1-6-14

Signature: 



## APPLICANT ASSURANCES

The applicant hereby assures and certifies that it will comply with the FEMA regulations, policies, guidelines and requirements including, but not limited to the following authorities: OMB Circulars Nos. A-87, A-95, A-102 and A-110, where applicable, and Part 13 of Title 44 of the Code of Federal Regulations (C.F.R.), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also, the Applicant gives assurance and certifies with respect to and as a condition for the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurance contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 11990, relating to Protection of Wetlands.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.
4. It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grant or agency may need.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17-7031). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.
11. It agrees to comply with Section 311, P.L. 93-288 and with Title VI of the Civil Rights act of 1964 (P.L. 83-352) and in accordance with Title VI of the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally-assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular A-102, P.L. 93-288 as amended, and applicable Federal Regulations.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
17. (To the best of his knowledge and belief) the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 Code of Federal Regulations, Part 205, and applicable FEMA Handbooks.
18. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not or will not duplicate benefits received for the same loss from another source.
19. It will (1) provide without cost to the United States all lands, easements and rights-of-way necessary for accomplishment of the approved work; (2) hold and save the United States free from damages due to the approved work or Federal funding.
20. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Applicant by FEMA that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear on the reverse as authorized to sign this assurance on behalf of the applicant.
21. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director, Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
22. It will comply with the insurance requirements of Section 314, P.L. 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assurance.
23. It will defer funding of any projects involving flexible funding until FEMA makes a favorable environmental clearance, if this is required.
24. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
25. It will for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards; and, will evaluate the natural hazards in areas in which the proceeds of the grant or loan are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.

## STATE ASSURANCES

The State agrees to take any necessary action within State capabilities to require compliance with these assurances and agreements by the applicant or to assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the Regional Director.



**HYDE COUNTY CDBG-CONTINGENCY INFRASTRUCTURE PROGRAM**  
**Project Ordinance (Revised January 6, 2014)**

Be it ordained by Hyde County, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance for CDBG Grant #05-D-2194, dated July 5, 2011, is hereby amended as follows:

Section 1. The project authorized is the Community Development Block Grant Contingency Infrastructure project described in the work statement contained in the amended grant agreement (05-D-2194) between Hyde County and the North Carolina Department of Commerce dated December 9, 2014. This project is more familiarly known as the Hyde County US 264 Sewer Improvements Project.

Section 2. The Hyde County staff is hereby directed to proceed with the amended grant project within the terms of the grant document(s), the rules and regulations of the Department of Commerce, and the budget contained herein.

Section 3. The following revenues and resources are anticipated to be available to complete the project activities:

US 264 Sewer Improvements Project

CDBG Grant	\$600,000.00
	\$625,754.25
 Total Project Resources	 \$600,000.00
	\$625,754.25

Section 4. The following amounts are appropriated for the project activities:

US 264 Sewer Improvements Project

Project Budget	\$600,000.00
	\$625,754.25

Section 5. The Grant Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to provide the accounting to the North Carolina Department of Commerce required by the grant agreement(s) and federal and state regulations.

Section 6. Funds may be advanced from the General Funds for the purpose of making payments as due. Reimbursement requests should be made to the North Carolina Department of Commerce in an orderly and timely manner.

Section 7. The Grant Finance Officer is directed to report quarterly on the financial status of each project element in Section 4 and on the total grant revenues received or claimed.

Section 8. The Grant Finance Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this council.

Section 9. Copies of this grant project ordinance shall be made available to the Grant Finance Officer for direction in carrying out this project.

Adopted this 6<sup>th</sup> day of January, 2014.



Barry Swindell, Chairperson  
Hyde County Board of Commissioners

ATTEST:



Averil Simmons, Deputy Clerk to the Board





**RESOLUTION AUTHORIZING THE ADVERTISEMENT  
OF AN OFFER TO LEASE CERTAIN SURPLUS REAL PROPERTY  
LOCATED IN OR NEAR THE TOWN OF SWAN QUARTER, HYDE COUNTY, NORTH  
CAROLINA**

**WHEREAS**, North Carolina General Statute § 160A-272(b) authorizes a county to lease real property that it owns for more than ten (10) years so long as such leases are "... treated as a sale of property ..." and so long as such leases are "... executed by following any of the procedures authorized for the sale of real property."

**WHEREAS**, North Carolina General Statute § 160A-269 authorizes a county to sell real property it owns through a negotiated offer, advertisement, and upset bid process.

**WHEREAS**, the County of Hyde (County) has received a proposed Second Amendment to an existing Tower and Ground Lease for space located on said tower as described in the Tower and Ground Lease dated October 23, 1998. This Second Amendment would cover a period in excess of ten (10) years.

**NOW, THEREFORE, BE IT RESOLVED** by the County Commissioners as follows.

1. The County Commissioners have received a proposed Second Amendment to Tower and Ground Space Lease for certain space leased on the Tower to accommodate various antennas and certain ground space adjacent to said Tower containing 273 square feet.
2. The real property that would be subject to said Offer to Lease ("real property") is hereby declared to be surplus to the needs of the County and the County Commissioners hereby authorizes the lease of the same pursuant to North Carolina General Statute § 160A-272(b) and through the upset bid procedure contained in North Carolina General Statute § 160A-269.
3. The Offer to Lease is for the purpose of amending the renewal period of the original lease above referred to. Said original lease is deemed to expire November 30, 2018 and this Offer to Lease is to renew and extend the same for up to three additional terms of five years each as the same shall coincide with, and not exceed, the duration of Lessor's right to the keep the Tower at the site, upon a continuation of all the same provisions thereof, subject to Lessee's unilateral right of termination. It is estimated that the initial renewal term of five years shall be at least \$1,000.00 per month for a minimum total of \$60,000.00 for said initial five years. At the renewal date of each additional term, the Base Rent shall be adjusted and proportioned to the cumulative change in the latest published consumer price index compared to the same index as shown for the historical month of December, 1998 and Lessee shall pay the amount of rent as so adjusted. "Consumer price index" shall mean the Consumer Price Index for all urban consumers, all items, U S City average, 1982-84 equals 100, (US




Department of Labor, Bureau of Labor Statistics", if the said index ceases to be published, then a reasonably comparable index sheet shall be used.

4. The present value of the rental payments for the five (5) year Initial Term of the Offer to Lease is \$60,000.00.
5. The entity making said Offer to Lease must deposit with the County Clerk a sum equal to five percent (5%) of said present value (\$3,000.00) in cash, cashier's check, or certified check.
6. The County Commissioners propose to accept the Offer to Lease, subject to the conditions stated in the Offer to Lease and herein, unless the County receives a qualifying upset Offer to Lease.
7. The County Clerk shall cause a notice of the Offer to Lease, subject to the conditions stated in the Offer to Lease and herein, to be published in accordance with North Carolina General Statutes § 160A-269 and § 160A-272.
8. Any individual or entity desiring to submit an upset Offer to Lease for said real property shall submit an upset Offer to Lease to the County Clerk at 30 Oyster Creek Road by 5:00 p.m. within ten (10) days of the date the notice provided for herein is published. To qualify as an upset Offer to Lease, any such upset Offer to Lease shall contain no more than three additional terms for up to five years each beginning on December 1, 2018, the amount to be paid for said options to extend the lease shall be at least \$1,000.00 per month adjusted and proportioned to the cumulative change in the latest published consumer price index compared to the same index as shown for the historical month of December, 1998 and Lessee shall pay the amount of rent as so adjusted. To qualify as an upset Offer to Lease, any such upset Offer to Lease must raise the present value of the rental payments for the initial five (5) year extension to lease by not less than ten percent (10%) of the first one thousand dollars (\$1,000.00) and five percent (5%) of the remainder of said present value. Any individual or entity making an upset Offer to Lease must deposit with the County Clerk the above described sum and said deposit shall be made in cash, cashier's check, or certified check. In order to be valid, any upset Offer to Lease shall include a Tower and Ground Space Lease including related easements.
9. If a qualifying upset Offer to Lease is received by the County, it shall become the new Offer to Lease and the County Clerk is directed to re-advertise the new Offer to Lease at the increased bid amount and to continue this process until a ten (10) day period has passed without the receipt of a subsequent qualifying upset Offer to Lease.
10. The County Commissioners retain final approval, and must approve and authorize the execution, of any Offer to Lease including Tower and Ground Space Lease as well as related easements resulting from this upset bid process.

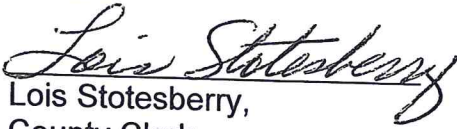


11. Notwithstanding anything herein to the contrary, the County reserves the right, pursuant to North Carolina General Statute § 160A-269 and without recourse from any individual or entity and in its sole discretion, to cancel this upset Offer to Lease bid process at any time and/or reject any or all Offers to Lease.

Adopted this 6<sup>th</sup> day of January, 20 14.

  
Barry Swindell,  
Chair Hyde County Board of Commissioners

ATTEST:

  
Lois Stotesberry,  
County Clerk

